

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>2:07cr-58-WHA</b>
	)	
<b>COURTNEY SMITH</b>	)	

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**MOTION TO SUPPRESS STOP AND SUBSEQUENT SEARCH AND SEIZURE**

**COMES NOW**, the Defendant, Courtney Smith, by and through undersigned counsel, Kevin L. Butler, and moves to suppress all evidence illegally seized as a result of the stop, search and seizure of the vehicle driven by Mr. Smith on August 15, 2005. This evidence includes but is not limited to: (a) any and all physical evidence seized from the vehicle or Mr. Smith on August 15, 2005, (b) any and all statements made as a result of the illegal stop, search and seizure of the vehicle, and (c) any other “fruit” of the illegal stop, search and seizure.

**Facts**

Mr. Smith is a 29 year old African-American male. On August 15, 2005, Mr. Smith was operating a blue and gray Lincoln Towncar (the vehicle) safely, was in compliance with all traffic laws/regulations and within posted speed limits. Two African-American males were passengers in Mr. Smith’s vehicle. The passengers were also in compliance with all vehicle regulations (e.g., seatbelts).

Nevertheless, at approximately, 10:40 p.m., the vehicle was stopped by Montgomery City Police Officers, Ellison and Calhoun. The officers stopped the vehicle for making an “illegal right-handed turn.” After the vehicle stop, ammunition was found on Mr. Smith’s person and a firearm was found in the vehicle. Mr. Smith was subsequently charged in this Court with being a felon in

possession of a firearm.

### **Argument**

The stop of Mr. Smith was not based upon probable cause or information indicating that he had violated any traffic laws. Therefore, the subsequent stop, search and seizure were improper and all evidence seized as a result of the unconstitutional stop, search, and seizure must be suppressed.

The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.” Const. Amend IV. “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 88 S.Ct. 507, 514 (1967) (internal citations omitted).

One of those exceptions is the stop of a vehicle. However, police may only stop a vehicle if the totality of circumstances show that there is probable cause to believe occupant(s) have violated the law (i.e., committed a traffic violation or some other offense). *United States v. Arvizu*, 122 S.Ct. 744 (2002). And though a police officer may order an individual out of the vehicle once it is stopped, there must be some legitimate basis (i.e., traffic violation) for the stop of the vehicle. *Wren v. United States*, 517 U.S. 806 (1996); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

In this case, there was no reasonable basis or justification for the stop. Mr. Smith was not violating any traffic rules or laws. Additionally, the officers had no cause to believe he was engaged in any illegal conduct. Mr. Smith’s stop was pretextual. Mr. Smith was not stopped because he had committed any traffic infraction or because the officers had cause to believe he was engaged in any criminal behavior.

**WHEREFORE**, Mr. Smith asks this Court to enter an order suppressing all evidence (statements and items) seized during and subsequent to the stop of the vehicle he was driving on August 15, 2005.

Dated this 29<sup>th</sup> day of May 2007.

Respectfully submitted,

s/ Kevin L. Butler  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Jerusha T. Adams, Esquire  
Assistant United States Attorney  
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Respectfully submitted,

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